

EXHIBIT 4

From: Sonali Maitra
Sent: Monday, March 07, 2011 12:44 PM
To: Johanna Schmitt; Joseph Gratz
Cc: #Xio Litigation; 'Don Robinson'; Schoenberg, Robert
Subject: RE: Tetris v. Xio - Production Issues

Johanna,

I write to address what I hope are all remaining discovery issues.

[REDACTED]

[REDACTED]

Second, Xio will not produce its privileged communications with its attorney Jeffrey Neu. As we have explained, Xio does not rely on an advice of counsel defense. Xio is not using the privilege as a “sword and a shield”; Tetris, not Xio, insisted that communications with third party attorneys other than Mr. Neu with whom Xio did not have a reasonable expectation of confidentiality be injected into the case. Xio produced those communications in an effort to avoid further discovery disputes with Plaintiffs, but Plaintiffs are now using those communications to argue a wholesale waiver of privilege of communications with its retained counsel. There is no waiver, and we will not produce communications with Mr. Neu – not least because, as mentioned above, Xio **is not asserting an advice of counsel defense**.

Third, we do not believe there to be any technical issues with Xio’s last production, but we are looking into the matter and will endeavor to correct any technical deficiencies we identify in advance of the court call on Thursday.

Fourth, we will re-review the documents listed on the privilege log, produce any about which Xio did not have a reasonable expectation of confidentiality, and provide Plaintiffs with an amended privilege log. I cannot promise that this will be done before the Court call, as you raised this issue just Friday, but I will do my best.

Please do not hesitate to contact me with any questions.

Sonali

Durie Tangri LLP

From: Johanna Schmitt [<mailto:johanna.schmitt@kirkland.com>]
Sent: Monday, March 07, 2011 10:01 AM
To: Sonali Maitra; Joseph Gratz
Cc: #Xio Litigation; 'Don Robinson'; Schoenberg, Robert
Subject: Fw: Tetris v. Xio - Production Issues

Sonali and Joe,

Please let us know your response to the issues raised in our emails of March 1 and March 3 by the end of the day. We want to be able to alert Judge Arpert to our areas of disagreement in advance of the conference on Thursday.

- Johanna

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----- Forwarded by Johanna Schmitt/New York/Kirkland-Ellis on 03/07/2011 12:42 PM -----

Johanna Schmitt/New York/Kirkland-Ellis

To Smaitra@durietangri.com

03/03/2011 06:05 PM

cc Joseph Gratz <jgratz@durietangri.com>, #Xio Litigation@K&E, 'Don Robinson' <DROBINSON@RWMLegal.com>, "Schoenberg, Robert" <RSCHOENBERG@RIKER.com>

Subject Tetris v. Xio - Production Issues

Sonali,

We are waiting for your response to my email of March 1 seeking the production of all documents (including communications with Jeffrey Neu), which indicate that Xio was told before the start of this lawsuit that Mino infringed or may infringe our client's rights. Please let us know Xio's position.

Also, we would like to bring the following production issues to your attention:

1) Xio's Amended Privilege Log contains an entry for a document with Bates number XIO-DG-0002111, which is described as "Draft of email to G. Reback re potential representation". As Ms. Golen confirmed in her deposition, there is no privilege here -- and, to the extent Xio claims this document is privileged, Xio has previously produced drafts of similar emails to Mr. Reback (see e.g., XIO-HD-XIO-0000014), thus any claimed privilege is clearly waived. Accordingly, please promptly produce the document with Bates number XIO-DG-0002111.

2) During her deposition on 2/10/11, Ms. Golen demonstrated that she did not have an expectation of privacy when communicating with attorneys prior to the filing of this lawsuit (including Julie Turner, Pamela Samuelson, Colin Chapman, etc). There are, however, still many entries on Xio's Amended Privilege Log for communications with attorneys prior to the filing of this lawsuit, including, but not limited to, the following:

- Paul Gold
- Elizabeth Levin

- L. Hudd
- Richard C. Litman
- Yolanda G. Ybuan
- David A. Randall
- Shyh-Jye Wan
- Vichai Mittongtar

As Xio has demonstrated that it did not have an expectation of privacy when communicating with such attorneys, there is no privilege covering these communications. Promptly produce all communications with the above attorneys and any other attorneys for which Xio did not have an expectation of privacy.

3) Given the recent production of documents that were originally withheld as privileged, and Xio's purported claims to claw back certain documents during depositions of its witnesses, we ask that Xio amend its privilege log to accurately reflect which documents it is asserting privilege for. This request does not constitute a waiver of our objections as to the propriety of any privilege claims.

4) On February 18, Joe stated that Xio was unable to produce a TIF image for the second page of the document with Bates number XIO-DG-0002353 at that time, and instead produced the text of the file with special Bates number XIO-DG-9002353. Is Xio able to produce a TIF image for that page at this time? If so, please produce it.

5) Xio's load file for the documents produced on February 17th continues to contain errors. For example, although the document with Bates number XIO-DG-0100734 is an e-mail indicating that it included two attachments and Xio's load file indicates that it produced one of the attachments (XIO-DG-0100739), Xio's load file does not include a record for the second attachment (XIO Interactive Online Infringing Mino & Mino Lite Games letter.pdf). Please produce a complete load file correcting such errors.

6) We are unable to open the native file for the document with Bates number XIO-DG-0100861. Please re-send the native file.

- Johanna

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